

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PACCAR INC., a Washington corporation, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MALIBU INTERNATIONAL LIMITED, a )  
 California corporation, )  
 )  
 Defendant. )

No. 2:09-cv-00477-RAJ

**DECLARATION OF KENNETH R.  
DAVIS II IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
ENTRY OF JUDGMENT AND  
PERMANENT INJUNCTION**

The undersigned makes the following Declaration under penalty of perjury as permitted by RCW 9A.72.085:

1. I am one of the attorneys representing Plaintiff PACCAR Inc. ("Plaintiff" or "PACCAR") in the above-entitled matter and make this declaration upon my personal knowledge and beliefs.

2. PACCAR initiated a lawsuit against defendant Malibu International Limited ("Defendant") on April 8, 2009. *See* Complaint (doc. no. 1). Defendant was served with the Summons and Complaint on August 2, 2009 via personal service upon Defendant's President, Bernadette Allen, and via U.S. Mail to Ms. Allen on August 5, 2009. *See* Proof of Service (doc. no. 3). Service of the Summons and Complaint upon Defendant was perfected via service upon the California Secretary of State on October 19, 2009. *See* Proof of Service (doc. no. 8).

DECLARATION OF KENNETH R. DAVIS II  
(No. 2:09-cv-00477-RAJ) - 1

3. This Court issued an Order of Default for failure to appear against Defendant on December 23, 2009 (doc. no. 11).

4. Plaintiff is entitled to the recovery of the attorneys' fees, costs, and expenses incurred in enforcing its trademark and trade dress rights.

5. Attached as Exhibit A are true and accurate copies of Lane Powell PC's invoices for this matter evidencing the attorneys' fees and costs expended on behalf of Plaintiff. In total, the amount of fees incurred by Plaintiff are \$10,995.50, and the total costs incurred are \$1,027.30, for a total of \$12,022.80.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 26th day of January, 2010, at Portland, Oregon.

/s/ Kenneth R. Davis II  
Kenneth R. Davis II

DECLARATION OF KENNETH R. DAVIS II  
(No. 2:09-cv-00477-RAJ) - 2

709015.0001/826202.1

**LANE POWELL PC**  
601 SW SECOND AVENUE, SUITE 2100  
PORTLAND, OREGON 97204-3158  
503.778.2100 FAX: 503.778.2200

Wire Transfer Information:

Wells Fargo Bank  
 ABA No. 121000248  
 Account No. 4159599521  
 Swift Code WFBUS6S  
Visa and Mastercard  
Accepted:  
 Please call (206) 223-6288

Remit Payments To:

1420 Fifth Ave  
 Ste 4100  
 Seattle, WA  
 98101-2338  
 Attn: Cash Receipts  
 Fax: (206) 223-7107

Identification No. 20-2071651

PACCAR Inc  
 777 106th Avenue NE  
 Bellevue WA 98004

May 22, 2009  
 Invoice No. 3453071

FOR PROFESSIONAL SERVICES RENDERED THROUGH 04/30/09

Matter: 709015.000001

Malibu International

02/03/2009	K. Davis	1.10	Review documents sent by client and analysis re same
02/11/2009	K. Davis	0.30	Review issues re status; correspondence and telephone conference with Wal-Mart attorney re same
02/12/2009	K. Davis	0.30	Correspondence with counsel with Wal-Mart re status
02/17/2009	K. Davis	0.40	Correspondence with Wal-Mart counsel re status; review issues re same
02/20/2009	K. Davis	0.20	Correspondence with client re status
02/23/2009	K. Davis	0.30	Correspondence with counsel for Wal-Mart re status
02/24/2009	K. Davis	0.40	Numerous correspondence with counsel from Wal-Mart re status
03/09/2009	K. Davis	0.20	Correspondence with Wal-Mart re status
03/10/2009	K. Davis	1.20	Meeting with client to define trade dress issues; follow up re same and analysis of design patents
03/12/2009	K. Davis	0.20	Correspondence with Wal-Mart re status
03/13/2009	K. Davis	0.30	Correspondence with client re status
03/18/2009	K. Davis	2.30	Draft complaint; telephone conference with counsel for Wal-Mart re status

Our File: 709015.000001

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PACCAR Inc

May 22, 2009

03/19/2009	K. Davis	1.10	Draft complaint
03/24/2009	K. Davis	0.20	Correspondence with counsel for Wal-Mart re status
03/31/2009	K. Davis	4.30	Revise complaint; correspondence with Wal-Mart attorney re status; correspondence with client re status
04/02/2009	K. Davis	2.60	Review and revise complaint; correspondence with client re same
04/06/2009	K. Davis	0.30	Correspondence with client re status; analyze issues re status of complaint
04/07/2009	K. Davis	0.40	Review complaint; correspondence with client re same; prepare for filing
04/13/2009	K. Davis	0.30	Begin draft of demand letter; analyze issues re same
04/16/2009	K. Davis	1.00	Draft demand letter
04/17/2009	K. Davis	0.30	Correspondence with client re status
04/21/2009	K. Davis	0.00	Telephone conference with client re trademark issues surrounding Twitter (time not billed as client courtesy)
04/28/2009	K. Davis	0.20	Correspondence with client re status
	TOTAL HOURS	17.90	

OUR FEE	\$7,160.00
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## COSTS ADVANCED

04/24/2009	Complaint filing fee - Courts USDC, WA, 4/8/09	350.00
	Color reproduction costs	35.00
	Reproduction costs	10.44
	Messenger and courier service	20.15

TOTAL COSTS ADVANCED	\$ 415.59
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Our File: 709015.000001

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PACCAR Inc

May 22, 2009

## RATE SUMMARY

<u>Attorney/Timekeeper</u>	<u>Hours Worked</u>	<u>Billed Per Hour</u>	<u>Bill Amount</u>
K. Davis	17.90	400.00	7,160.00
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Total all Timekeepers	17.90		7,160.00

TOTAL THIS INVOICE

\$7,575.59

**Wire Transfer Information:**

Wells Fargo Bank  
ABA No. 121000248  
Account No. 4159599521  
Swift Code WFBUS6S  
**Visa and Mastercard**  
**Accepted:**  
Please call (206) 223-6288

**Remit Payments To:**

1420 Fifth Ave  
Ste 4100  
Seattle, WA  
98101-2338  
Attn: Cash Receipts  
Fax: (206) 223-7107

Identification No. 20-2071651

PACCAR Inc  
777 106th Avenue NE  
Bellevue WA 98004

August 7, 2009  
Invoice No. 3459180

FOR PROFESSIONAL SERVICES RENDERED THROUGH 07/31/09

Matter: 709015.000001

Malibu International

05/04/2009	K. Davis	0.20	Correspondence with client re status
05/20/2009	K. Davis	0.20	Correspondence with client re status
07/28/2009	K. Davis	0.40	Review issues re service and extension re same
TOTAL HOURS		0.80	

OUR FEE	\$320.00
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## COSTS ADVANCED

Reproduction costs	8.64
Court Document Charge	146.96

TOTAL COSTS ADVANCED	\$ 155.60
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## RATE SUMMARY

<u>Attorney/Timekeeper</u>	<u>Hours Worked</u>	<u>Billed Per Hour</u>	<u>Bill Amount</u>
K. Davis	0.80	400.00	320.00
<hr/>			
Total all Timekeepers	0.80		320.00

Our File: 709015.000001

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PACCAR Inc

August 7, 2009

TOTAL THIS INVOICE

\$475.60

Wire Transfer Information:

Wells Fargo Bank  
 ABA No. 121000248  
 Account No. 4159599521  
 Swift Code WFBUIUS6S  
Visa and Mastercard  
Accepted:  
 Please call (206) 223-6288

Remit Payments To:

1420 Fifth Ave  
 Ste 4100  
 Seattle, WA  
 98101-2338  
 Attn: Cash Receipts  
 Fax: (206) 223-7107

Identification No. 20-2071651

PACCAR Inc  
 777 106th Avenue NE  
 Bellevue WA 98004

November 16, 2009  
 Invoice No. 3468424

FOR PROFESSIONAL SERVICES RENDERED THROUGH 10/31/09

Matter: 709015.000001

Malibu International

07/30/2009	B. Harmon	1.10	Obtain information re location of officers of Malibu International for purposes of serving complaint; draft motion, memo and declaration to extend
08/03/2009	P. Mehrbani	1.10	Review and revise motion for extension of time to effectuate service, declaration in support of same, proposed order, and memorandum in support of same
08/04/2009	K. Davis	0.30	Review issues re service and follow up re same
08/04/2009	P. Mehrbani	0.50	Revise and finalize motion for extension of time to effectuate service, declaration in support of same, proposed order, and memorandum in support of same; review messages from K. Davis and B. Harmon re potential service of same
08/04/2009	B. Harmon	0.50	Telephone calls and emails to Nationwide re subpoena to Malibu International; review materials from California Secretary of State re same; prepare materials for attorney review
08/05/2009	P. Mehrbani	0.30	Review messages from K. Davis and B. Harmon re filing notice of service of summons and complaint; intraoffice conference with B. Harmon re filing same with court
08/05/2009	B. Harmon	0.90	Telephone calls to Nationwide re proof of service; meet with attorney re same; revise and prepare motion, declaration and memorandum to extend for attorney review; revise declaration; telephone call



PACCAR Inc

November 16, 2009

			to clerk re filing
08/05/2009	D. Stare	0.50	Review return of service information from Nationwide and e-mail to P. Mehrbani re same; telephone conference with Royal at Nationwide; conference with B. Harmon re finalizing motion for extension of time; e-mail to Royal at Nationwide with copy of complaint for mailing
08/06/2009	D. Stare	0.20	Telephone conference with Judge Jones' clerk, Consuelo, re late filing of the proof of service; e-mail to K. Davis re same
08/07/2009	K. Davis	0.20	Review issues re status of service and correspondence with client re same
08/07/2009	B. Harmon	0.20	Telephone call with Nationwide re proof of service; prepare same for attorney review
08/14/2009	K. Davis	0.20	Pleadings from court re case scheduling
08/26/2009	K. Davis	0.40	Correspondence with client re status; review issues for default
08/26/2009	D. Stare	0.40	Research substitute service on corporations and e-mail to K. Davis re same
08/27/2009	K. Davis	0.40	Review issues re service and telephone conference with client re same
08/27/2009	D. Stare	1.00	Research Washington rules for substitute service on a corporation
09/21/2009	J. Healey	0.20	Draft motion for alternative service of process
09/22/2009	J. Healey	0.40	Draft motion to allow alternative service
09/24/2009	J. Healey	2.30	Research federal rules of civil procedure re service on out-of-state corporation; research California law re service of corporation through secretary of state; draft motion to allow for alternative service
09/28/2009	J. Healey	0.40	Revise motion for order allowing service through California Secretary of State pursuant to California CCP Section 1702(a), (d)
10/01/2009	K. Davis	0.60	Draft motion re service
10/05/2009	K. Davis	0.30	Review issues re filings
10/06/2009	K. Davis	0.50	Review issues re service on secretary of state and order from court re same
10/21/2009	K. Davis	0.40	Correspondence with client re status; review orders

Our File: 709015.000001

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PACCAR Inc

November 16, 2009

from court

TOTAL HOURS 13.30

OUR FEE \$3,515.50

## COSTS ADVANCED

09/30/2009	Process service - - Nationwide Process Service Inc , Malibu International Limited, care of Bernadette Allen, President, 7/23/09	347.59
10/06/2009	Alternate Service of Process Fee - California Secretary of State , 10/06/09	50.00
	Reproduction costs	35.28
	Messenger and courier service	22.84
	Long distance telephone	0.40

TOTAL COSTS ADVANCED \$ 456.11

## RATE SUMMARY

<u>Attorney/Timekeeper</u>	<u>Hours Worked</u>	<u>Billed Per Hour</u>	<u>Bill Amount</u>
K. Davis	3.30	400.00	1,320.00
J. Healey	3.30	235.00	775.50
P. Mehrbani	1.90	280.00	532.00
B. Harmon	2.70	185.00	499.50
D. Stare	2.10	185.00	388.50
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Total all Timekeepers	13.30		3,515.50

TOTAL THIS INVOICE \$3,971.61